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Attorneys for Defendant Lynn Martinez

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NATIONWIDE LIFE INSURANCE
COMPANY,

Plaintiff,

vs.

LYNN MARTINEZ, AMERICAN
FUNERAL FINANCIAL, LLC,
DIANE COLLEY, MICHELLE
COLLEY, MELISSA COLLEY and
MEGAN COLLEY,

Defendants.

CASE NO. 2:16-cv-01845

**STIPULATION AND ORDER
DISCHARGING NATIONWIDE
LIFE INSURANCE COMPANY
AND FOR DISMISSAL**

ECF No. 36

This Stipulation is entered by and between the following parties, by and through their respective counsel: Nationwide Life Insurance Company (“Nationwide”), Lynn Martinez (“Martinez”), America Funeral Financial, LLC (“AFF”), Diane Colley, Michelle Colley, Melissa Colley and Megan Colley (collectively, the “Colleys”).

FACTS

1. On or about November 30, 1992, Nationwide issued its Life Insurance Policy Number L030421220 (the “Policy”), to David Colley. David Colley was both the owner of and insured under the Policy.

2. In his application for the Policy, Mr. Colley listed his then spouse,

1 Defendant Diane Colley, as the primary beneficiary under the Policy. Mr. Colley
2 listed his daughters, Michelle Colley, Melissa Colley and Megan Colley, as
3 contingent beneficiaries.

4 3. On or about October 16, 2015, Nationwide received an Application for
5 Change of Beneficiary Designation by which Mr. Colley requested that the primary
6 beneficiary under the Policy be changed to Lynn Martinez, “girlfriend/fiancé,” and
7 that the contingent beneficiaries be changed to Robert R. Roik, “friend,” Lisa
8 Johnson, “friend,” Jeffrey Strough, “friend,” and Jayme Strough, “friend.”
9 Mr. Colley’s signature is dated October 16, 2015, and his signature witnessed by
10 Carla Roik on December 1, 2015.

11 4. Mr. Colley died on March 4, 2016.

12 5. On March 8, 2016, Nationwide received an “Insurance Assignment”
13 from Defendant AFF purporting to assign \$11,738.80 in Policy death benefits to
14 AFF. The Assignment Form is signed by Defendant Lynn Martinez and is dated
15 March 7, 2016.

16 6. On or about April 11, 2016, Nationwide received a Life Beneficiary
17 Claim Form from Defendant Lynn Martinez, requesting payment of the Policy’s
18 death benefits to her.

19 7. On or about April 19, 2016, Nationwide received a letter from Diane
20 Colley, indicating that Mr. Colley was placed into a nursing home in October, 2015,
21 due to his condition of a “brain tumor” and that he “was not able to make clear
22 decisions.” Diane Colley questioned the October, 2015, change of beneficiary to
23 Defendant Lynn Martinez because “Mr. Colley was being manipulated in his
24 condition.” Diane Colley requested that Nationwide immediately investigate this
25 matter.

26 8. As a result of the foregoing, Nationwide is unsure as to whom should
27 receive the Policy’s death benefits.

28 9. Nationwide is, and always has been, ready, able and willing to pay the

1 death benefits due under the Policy to the person(s) who may be lawfully entitled to
2 receive them. Nationwide, however, is unable to determine who is entitled to
3 receive the death benefits payable under the Policy, as between the Defendants,
4 without being faced with the real and reasonable potential of multiple claims and
5 liability under the Policy.

6 STIPULATION

7 10. Nationwide is a disinterested stake holder and has no interest in the
8 death benefits payable under the Policy.

9 11. Nationwide shall pay \$11,738.30 to the Payne & Fears LLP Client
10 Trust Account on behalf of AFF from the Policy proceeds. Nationwide shall
11 deposit the remainder of the Policy proceeds with the Clerk of the Court.

12 12. Martinez and the Colleys shall separately litigate their rights to the
13 Policy proceeds. Specifically, the Colleys shall amend their answer and add a
14 counterclaim stemming from their belief that the change of beneficiary designation
15 to the Nationwide policy is inappropriate, at which time Martinez shall file her
16 answer.

17 13. Nationwide will be released, discharged and forever acquitted from
18 any and all liability in connection with, arising out of, or relating to the issuance of
19 the death benefits payable under the Policy, upon payment of the \$11,738.30 to
20 AFF and the remainder of the Policy proceeds to the Clerk of the Court.

21 14. This action shall be dismissed with prejudice, as to Nationwide and
22 AFF, only, with each to bear its own attorneys' fees and costs.

23 15. Following the dismissal of Nationwide and AFF with prejudice, the
24 Colleys and Martinez shall litigate their claims regarding the payment of the
25 remaining Policy proceeds.

26 16. That after the Colleys amend their answer and add the counterclaim as
27 referenced above, the Colleys and Martinez request that this matter be referred to a
28 Magistrate Judge for a settlement conference.

1 DATED: May 18, 2017

2 THOMPSON COBURN LLP

3
4 By: /s/ John L. Viola
5 John L. Viola
6 Admitted Pro Hac Vice
7 Attorney for Plaintiff, Nationwide
Life Insurance Company

8 DATED: May 18, 2017

9 THRONE & HAUSER

10 By: /s/ Dawn R. Throne
11 Dawn R. Throne
12 Nevada Bar No. 6145
13 Attorneys for Defendant and Cross
14 Defendants Diane Colley, Michelle
15 Colley, Melissa Colley and Megan
16 Colley

17 DATED: May 18, 2017

18 SOLOMON DWIGGINS & FREER,
19 LTD.

20
21 By: /s/ Jeffrey P. Luszek
22 Jeffrey P. Luszek
23 Nevada Bar No. 9619
24 Attorneys for Defendant and Cross-
Defendant Lynn Martinez

DATED: May 18, 2017

WOODBURN AND WEDGE

By: /s/ W. Chris Wicker
W. Chris Wicker, Esq.
Nevada Bar No. 1037
Attorney for Plaintiff, Nationwide
Life Insurance Company

DATED: May 18, 2017

PAYNE & FEARS LLP

By: /s/ Chad Olsen
Gregory H. King
Nevada Bar No. 7777
Chad Olsen, Nevada Bar No. 12060
Attorneys for Defendant and Cross-
Claimant, American Funeral
Financial, LLC

ORDER

IT IS SO ORDERED. All claims in this action by and against Nationwide Life Insurance Company and American Funeral Financial, LLC are DISMISSED with prejudice. The Colley defendants have until June 12 to file an amended answer and crossclaim against Martinez. Failure to file a crossclaim by that date will result in the dismissal of this entire case for lack of a pending claim. Once the crossclaim has been filed, the remaining parties may move for a referral to a magistrate judge for a settlement conference.


U.S. District Judge Jennifer Dorsey
6-1-17